



JONES HALL

# Initial Disclosure

California Debt and Investment Advisory Commission  
Municipal Debt Essentials

Presented by Chris Lynch

October 22, 2013

# Timeline of Federal Securities Laws

- 1929: Great Depression
- 1933/1934: '33 Act and '34 Act
- 1975: New York City crisis
- 1975: MSRB established
- 1978: Cleveland loan defaults
- 1983: WPPSS defaults
- 1989: Rule 15c2-12 (initial disclosure)
- 1994: Orange County, CA bankruptcy
- 1994: Rule 15c2-12 amendment (continuing disclosure)
- 2008: EMMA
- 2008: SEC complaint in San Diego
- 2010: SEC complaint in New Jersey
- 2010: Dodd–Frank
- 2010: SEC Enforcement Division: Municipal Securities and Public Pensions Unit

# Not Your Parents' Muni Bonds...

- ▣ “Regulation of the Municipal Securities Market: Investors Are Not Second-Class Citizens,” SEC Commissioner Elisse B. Walter (2009)
  - In sum, the municipal securities market today bears no resemblance to, in the words of former SEC Chairman Christopher Cox, “the relatively small and sleepy municipal bond activity of days gone by.” Rather than being a small “backwater market,” the municipal securities market is an increasingly significant part of the U.S. capital markets.
  
- ▣ SEC, Office of Municipal Securities website
  - In 1945, there was less than \$20 billion of municipal debt outstanding.
  - In 1960, there was \$66 billion of municipal debt outstanding.
  - In 1981, there was \$361 billion of municipal debt outstanding.
  - Today, investors hold approximately \$3.7 trillion of municipal debt.

# Key Laws

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**Securities Act of 1933  
( ' 33 Act)**

**Securities Exchange Act of 1934  
( ' 34 Act)**

SEC Rule 10b-5  
SEC Rule 15c2-12  
Dodd-Frank reforms

# Securities Act of 1933

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- ▣ Registration
  - Exemption for munis
  
- ▣ Anti-Fraud

# Securities Exchange Act of 1934

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- ▣ Anti-Fraud
  - Section 10(b) & Rule 10b-5
  
- ▣ Rule 15c2-12


# Rule 15c2-12

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- ▣ Initial Disclosure
  
- ▣ Continuing Disclosure
  - Annual reporting
  - Events reporting

# Continuing Disclosure Compliance

## SEC investigation of continuing disclosure compliance

 UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
SAN FRANCISCO REGIONAL OFFICE  
44 MONTGOMERY STREET, SUITE 2800  
SAN FRANCISCO, CALIFORNIA 94104

DIVISION OF ENFORCEMENT

MONIQUE C. WINKLER  
Municipal Securities &  
Public Pension Unit  
Telephone: 415-705-2475  
Facsimile: 415-705-2501  
winklern@sec.gov

March 30, 2012

Via Overnight Delivery

[REDACTED]

Re: In the Matter of California Municipality Disclosure [REDACTED]

Date: [REDACTED]

The staff of the Division of Enforcement of the U.S. Securities and Exchange Commission is conducting a confidential, informal investigation in the above-referenced matter. In connection with this investigation, the staff requests that [REDACTED] produce the documents specified in the attachment to this letter.

We ask that [REDACTED] provide the documents and information requested in the attachment to the following person as soon as possible, but no later than April 16, 2012:

Monique C. Winkler  
U.S. Securities and Exchange Commission  
Division of Enforcement  
44 Montgomery Street, Suite 2800  
San Francisco, California 94104

Please serially number (i.e., Bates stamp) each of the pages you produce. In producing documents, please include a cover letter that identifies by Bates Number which request (and where applicable, which subpart) the produced documents concern and the individual whose files were the source of the documents. Please state whether a diligent search has been made for the requested documents and whether all of the responsive documents have been produced. We ask that, if for any reason any of the requested materials are not furnished, you list and indicate the location of such materials and the reason for their non-production.

Please find enclosed a copy of SEC Form 1662, which contains important information concerning the provision of information to the Commission.



# Continuing Disclosure Compliance

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 9434 / July 29, 2013

SECURITIES EXCHANGE ACT OF 1934  
Release No. 70056 / July 29, 2013

INVESTMENT COMPANY ACT OF 1940  
Release No. 30632 / July 29, 2013

ADMINISTRATIVE PROCEEDING  
File No. 3-15390

In the Matter of

City Securities Corporation  
and Randy G. Ruhl

Respondents.

ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933, SECTIONS 15(b),  
15B(c) AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, AND SECTION  
9(b) OF THE INVESTMENT COMPANY ACT  
OF 1940, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), and Sections 15(b), 15B(c)(2) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against City Securities Corporation ("City Securities"), and that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act, and Sections 15(b), 15B(c)(4) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Randy G. Ruhl ("Ruhl").

II.

In anticipation of the institution of these proceedings, City Securities and Ruhl have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 9435 / July 29, 2013

SECURITIES EXCHANGE ACT OF 1934  
Release No. 70057 / July 29, 2013

ADMINISTRATIVE PROCEEDING  
File No. 3-15391

In the Matter of

West Clark Community Schools,

Respondent.

ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933 AND SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
MAKING FINDINGS, AND IMPOSING A  
CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against the West Clark Community Schools ("School District").

II.

In anticipation of the institution of these proceedings, the School District has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, the School District consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

# Form of Official Statement

## State of California GO Bonds Official Statement - Cover

**NEW ISSUE—BOOK-ENTRY ONLY**

Ratings:  
Moody's: A1  
S&P: A  
Fitch: A  
(See "RATINGS" herein)

*In the opinion of Bond Counsel to the State of California (the "State"), interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and interest on the Bonds is exempt from State personal income taxes. See "TAX MATTERS" herein.*

**\$764,405,000**  
**STATE OF CALIFORNIA**  
**GENERAL OBLIGATION BONDS**

<b>\$205,000,000</b> <b>VARIOUS PURPOSE</b> <b>GENERAL OBLIGATION</b> <b>BONDS</b>	<b>\$559,405,000</b> <b>VARIOUS PURPOSE GENERAL</b> <b>OBLIGATION REFUNDING</b> <b>BONDS</b>
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**Dated:** Date of Delivery      **Due:** as shown on inside front cover

Interest on the Bonds is payable on March 1 and September 1 of each year, commencing March 1, 2014, at the respective rates per annum set forth on the inside front cover. The Bonds may be purchased in principal amounts of \$5,000 or any integral multiple thereof in book-entry form only. See "THE BONDS—General" and APPENDIX B—"THE BOOK-ENTRY ONLY SYSTEM." Certain of the Bonds are subject to redemption prior to their stated maturities, as described herein. See "THE BONDS—Redemption."

The Bonds are general obligations of the State to which the full faith and credit of the State are pledged. The principal of and interest on all State general obligation bonds, including the Bonds, are payable from any moneys in the General Fund of the State, subject under State law only to the prior application of such moneys to the support of the public school system and public institutions of higher education. See "AUTHORIZATION OF AND SECURITY FOR THE BONDS."

This cover page contains certain information for general reference only. It is not a summary of the security or terms of the Bonds. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision.

**MATURITIES, PRINCIPAL AMOUNTS,  
INTEREST RATES, YIELDS AND CUSIPS**  
(See Inside Front Cover)

*The Bonds are offered when, as and if issued by the State and received by the initial purchasers, subject to the approval of validity by the Honorable Kamala D. Harris, Attorney General of the State of California, and by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the State. Orrick, Herrington & Sutcliffe LLP and Lofton & Jennings, are serving as Co-Disclosure Counsel to the State with respect to the Bonds. Orrick, Herrington & Sutcliffe LLP and Stradling Yocca Carlson & Rauth, a Professional Corporation, are serving as Co-Disclosure Counsel to the State regarding Appendix A. Public Resources Advisory Group is serving as the Financial Advisor to the State with respect to the Bonds. The Bonds are expected to be available for delivery through the facilities of The Depository Trust Company on or about September 10, 2013.*

**HONORABLE BILL LOCKYER**  
*Treasurer of the State of California*

**THE BONDS WERE SOLD AT COMPETITIVE BID ON AUGUST 27, 2013  
INITIAL REOFFERING YIELDS HAVE BEEN SET BY THE RESPECTIVE INITIAL PURCHASERS**

Official Statement Dated: August 27, 2013

# Form of Official Statement

## State of California GO Bonds Official Statement – Description of the Bonds

### THE BONDS

#### General

The Bonds will be registered in the name of a nominee of DTC, which will act as securities depository for the Bonds. Beneficial interests in the Bonds may be purchased in book-entry form only in denominations of \$5,000 or any integral multiple thereof. See APPENDIX B—"THE BOOK-ENTRY ONLY SYSTEM." The information in APPENDIX B—"THE BOOK-ENTRY ONLY SYSTEM" has been furnished by DTC. No representation is made by the State as to the accuracy or completeness of such information.

The Bonds will be dated and accrue interest from the date of their delivery, and will mature on the dates and in the amounts set forth on the inside front cover page hereof. Interest on the Bonds is payable on May 1 and November 1 in each year (each, an "Interest Payment Date"), commencing on May 1, 2014, at the rates shown on the inside front cover page of this Official Statement. Interest on the Bonds will be calculated on the basis of a 360-day year comprising twelve 30-day months. If any payment on the Bonds is due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and no interest will accrue as a result. Business Day means any day other than a Saturday, a Sunday, a State holiday or any other day determined not to constitute a Business Day pursuant to the book-entry only system of DTC. Certain State holidays may fall on days that are not banking holidays, and can vary from year to year.

Principal and interest (including the redemption price) are payable directly to DTC by the State Treasurer. Upon receipt of payments of principal and interest, DTC is to in turn remit such principal and interest to the Direct Participants in DTC for disbursement by the Participants to the Beneficial Owners of the Bonds. The record date for the payment of interest on the Bonds is the close of business on the 15<sup>th</sup> day of the month immediately preceding an Interest Payment Date, whether or not the record date falls on a business day.

The State Treasurer can give no assurance that DTC will distribute to Direct Participants, or that Participants or others will distribute to the Beneficial Owners, payment of principal of and interest on the Bonds paid or any redemption or other notices or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The State Treasurer is not responsible or liable for the failure of DTC or any Direct Participant or Indirect Participant to make any payments or to give any notice to a Beneficial Owner with respect to the Bonds or for any error or delay relating thereto.

The terms of each series of Bonds are substantially identical, except that the State may assign each maturity of the Bonds to one or more Bond Acts, rather than having all of the Bonds mature proportionally by Bond Act across the entire maturity schedule.

# Form of Official Statement

## State of California GO Bonds Official Statement – Description of the security for the Bonds

### AUTHORIZATION OF AND SECURITY FOR THE BONDS

#### Authorization

The issuance of each series of Bonds is authorized by the related Bond Act identified under “THE BONDS—Identification, Authorization and Purposes of the Bonds” approved by the voters of the State and by the related Resolution. Each Bond Act and the State General Obligation Bond Law in Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the California Government Code, as incorporated by reference into each Bond Act, provide for the authorization, sale, issuance, use of proceeds, repayment and refunding of the related series of Bonds.

#### Security

The Bonds are general obligations of the State, and each series of the Bonds is payable in accordance with the related Bond Act and Resolution out of the General Fund, subject under State law only to the prior application of moneys in the General Fund to the support of the public school system and public institutions of higher education. The Bond Acts each provide that the State will collect annually in the same manner and at the same time as it collects other State revenue an amount sufficient to pay principal of and interest on the related series of Bonds in that year. The Bond Acts also each contain a continuing appropriation from the General Fund of



# Form of Official Statement

## STATE FINANCIAL CONDITION

*The following paragraphs present an extremely abbreviated summary of certain fiscal issues relating to the State, all of which are described in more detail in APPENDIX A. Investors should review the whole of APPENDIX A.*

During the recent recession, which officially ended in 2009, the State experienced the most significant economic downturn since the Great Depression of the 1930s. As a result, State tax revenues declined precipitously, resulting in large budget gaps and occasional cash shortfalls in the period from 2008 through 2011.

In 2011, the State faced \$20 billion in expected annual gaps between its revenues and spending for the ensuing several years. With the significant spending cuts enacted over the past two years (fiscal years 2011-12 and 2012-13) and new temporary revenues provided by the passage of Proposition 30, the latest forecast projects that the State ended fiscal year 2012-13 with a positive reserve of \$254 million, and that it will have a positive reserve of approximately \$1.1 billion at June 30, 2014. Further, the State's budget is projected to remain balanced within the projection period ending in fiscal year 2016-17. The latest forecast projects continued modest growth in California's economy.

Despite the recent significant budgetary improvements, there remain a number of major risks and pressures that threaten the State's financial condition, including the need to repay billions of dollars of obligations which were deferred to balance budgets during the economic downturn. In addition, the State's revenues (particularly the personal income tax) can be volatile and correlates to overall economic conditions. There can be no assurances that the State will not face fiscal stress and cash pressures again, or that other impacts of the current economic situation will not materially adversely affect the financial condition of the State.

## APPENDIX A

### THE STATE OF CALIFORNIA



NOTE: Since the date of the Preliminary Official Statement, certain information in Appendix A has been updated, shown in *italics* on page numbers A-32, A-39, A-129, A-130, A-138, A-139, A-141, A-144 and A-147.

August 27, 2013

# Form of Official Statement

## State of California GO Bonds Official Statement – Summary of Bond-related legal issues

### LEGAL MATTERS

The opinion of the Honorable Kamala D. Harris, Attorney General of the State (the "Attorney General"), approving the validity of the Bonds will be delivered concurrently with the issuance of the Bonds. The opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the State ("Bond Counsel"), approving the validity of the Bonds and addressing certain tax matters will be delivered concurrently with the issuance of the Bonds. The proposed forms of such legal opinions are set forth in APPENDIX D—"PROPOSED FORMS OF LEGAL OPINIONS." Orrick, Herrington & Sutcliffe LLP and Lofton & Jennings are serving as Co-Disclosure Counsel to the State with respect to the Bonds ("Bond Co-Disclosure Counsel"). Orrick, Herrington & Sutcliffe LLP and Stradling Yocca Carlson and Rauth, a Professional Corporation, are serving as Co-Disclosure Counsel to the State regarding Appendix A ("Appendix A Co-Disclosure Counsel").

The Attorney General, Bond Counsel, Bond Co-Disclosure Counsel and Appendix A Co-Disclosure Counsel, respectively, undertake no responsibility for the accuracy, completeness or fairness of this Official Statement.

### TAX MATTERS

In the opinion of Bond Counsel, based upon an analysis of existing laws, regulations, rulings, and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating federal corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX D—"PROPOSED FORMS OF LEGAL OPINIONS."

To the extent the issue price of any maturity of the Bonds is less than the amount to be paid at maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the Bonds which is excluded from gross income for federal income tax purposes and exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Bonds is the first price at which a substantial amount of such maturity of the Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the Bonds accrues daily over the term to maturity of such Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Bonds. Beneficial Owners of the Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of Beneficial Owners who do not

# Form of Official Statement

## State of California GO Bonds Official Statement – Summary of litigation

### LITIGATION

There is not now pending (with service of process on the State having been accomplished) or threatened any litigation seeking to restrain or enjoin the sale, issuance, execution or delivery of the Bonds or challenging the validity of the Bonds or any proceedings of the State taken with respect to the foregoing.

At any given time, including the present, there are numerous civil actions pending against the State, which could, if determined adversely to the State, affect the State's expenditures and, in some cases, its revenues and cash flow. While there can be no assurances as to the ultimate outcome and fiscal impact of such litigation, the State believes that it is unlikely that the outcome of any such litigation could adversely affect the ability of the State to pay the principal of and interest on the Bonds when due. See APPENDIX A—"THE STATE OF CALIFORNIA—LITIGATION."



# Form of Official Statement

## State of California GO Bonds Official Statement – Summary of sales information; audited financial statements

### PURCHASE AND REOFFERING

The Bonds were sold by competitive sale on August 27, 2013. Pursuant to the Notice of Sale dated August 20, 2013 (the "Notice of Sale") the Bonds were offered in two separate Maturity Groups (each, a "Maturity Group") as described below.

The Bonds maturing on September 1, 2014 through September 1, 2023 ("Maturity Group A") were awarded to Citigroup Global Markets Inc. (the "Maturity Group A Initial Purchaser"). The Maturity Group A Initial Purchaser has agreed to purchase the Bonds in Maturity Group A at a price of \$282,256,667.20, representing the principal amount of the Bonds in Maturity Group A, plus net original issue premium of \$33,877,454.75, less a Maturity Group A Initial Purchaser's discount of \$530,787.55.

The Bonds maturing on September 1, 2024 through September 2033 ("Maturity Group B") were awarded to J.P. Morgan Securities LLC (the "Maturity Group B Initial Purchaser" and, together with the Maturity Group A Initial Purchaser, the "Initial Purchasers, and each, an "Initial Purchaser"). The Maturity Group B Initial Purchaser has agreed to purchase the Bonds in Maturity Group B at a price of \$539,525,392.07, representing the principal amount of the Bonds in Maturity Group B, plus net original issue premium of \$26,328,528.20, less a Maturity Group B Initial Purchaser's discount of \$2,298,136.13.

The Notice of Sale provides that each Initial Purchaser of the Bonds in a Maturity Group will purchase all Bonds in such Maturity Group, if any such Bonds are purchased, the obligation to make such purchase is subject to certain terms and conditions set forth in the Notice of Sale, the approval of certain legal matters by counsel and certain other conditions. The obligations of each Initial Purchaser to purchase Bonds in a Maturity Group and the obligation of the State to sell such Bonds is independent of such obligations with respect to the other Maturity Group.

Each Initial Purchaser of Bonds in a Maturity Group has represented to the State that the Bonds of such Maturity Group were reoffered to the public at the applicable prices set forth on the inside cover page of this Official Statement. The Initial Purchaser of Bonds in a Maturity Group may offer and sell such Bonds to certain dealers and others at prices lower than the offering prices stated on the inside cover page of this Official Statement. The public offering prices stated may be changed from time to time by the Initial Purchasers.

### FINANCIAL STATEMENTS

The Audited Basic Financial Statements of the State of California for the Year Ended June 30, 2012 (the "Financial Statements") are included as APPENDIX E to this Official Statement. These Financial Statements have been examined by the State Auditor to the extent indicated in her report.

Certain unaudited financial information for the periods July 1, 2012 through July 31, 2013 and July 1, 2013 through July 31, 2013 are included as Exhibits 1 and 2, respectively, to Appendix A to this Official Statement. See APPENDIX A—"THE STATE OF CALIFORNIA—FINANCIAL STATEMENTS."



# Form of Official Statement

## State of California GO Bonds Official Statement – Description of ratings

### RATINGS

All of the Bonds have received ratings of “A1” by Moody’s Investors Service, “A” by Standard & Poor’s Rating Services and “A” by Fitch Ratings. An explanation of the significance and status of such credit ratings may be obtained from the rating agencies furnishing the same. There is no assurance that such ratings will continue for any given period of time or that they will not be revised or withdrawn entirely by any such rating agencies if, in their respective judgments, circumstances so warrant. Any revision or withdrawal of a credit rating could have an effect on the market prices and marketability of the Bonds. The State cannot predict the timing or impact of future actions by the rating agencies.

# Form of Official Statement

## State of California GO Bonds Official Statement – Description of 5-year compliance with continuing disclosure undertakings

### Continuing Disclosure

The State Treasurer will agree on behalf of the State to provide annually certain financial information and operating data relating to the State by not later than April 1 of each year in which any Bonds are outstanding (the “Annual Report”), commencing with the report to be filed on or before April 1, 2014, containing 2012-2013 Fiscal Year financial information, and to provide notice of the occurrence of certain enumerated events. The specific nature of the information to be contained in the Annual Report and the notices of events and certain other terms of the continuing disclosure obligation are set forth in APPENDIX C—“FORM OF CONTINUING DISCLOSURE CERTIFICATE.”

In the past five years, the State Treasurer has always filed its Annual Reports on a timely basis as required by its continuing disclosure undertakings. The State Treasurer has also, to his knowledge, complied with its undertakings to report on certain events, with the exception that discovered in 2012 the State Treasurer discovered that the State had failed to file notices relating to downgrades of seven maturities of its general obligation bonds when a bond insurer’s rating was downgraded. The State Treasurer was not aware of these occurrences at the time, since the rating agencies did not notify the State of their actions on the State’s bonds. Reports for the actions have since been filed with the Electronic Municipal Market Access (“EMMA”) website. The State has thousands of individual maturities of general obligation bonds outstanding, and has procedures in place to monitor events which may affect them, including rating changes. Filings through EMMA are linked to a particular issue of obligations by CUSIP number, which however is subject to being changed after the issuance of obligations as a result of various subsequent actions. Although the State Treasurer’s Office uses its best efforts to link each report filed through EMMA to the correct 9-digit CUSIP number, there can be no guarantee of complete accuracy in this process, given the large number of State CUSIPs.

The State’s Annual Reports and other required reports are available from the EMMA website ([www.emma.msrb.org](http://www.emma.msrb.org)) operated by the Municipal Securities Rulemaking Board (“MSRB”) or on such other website as may be designated by MSRB or the Securities and Exchange Commission. The information contained on any such website is not part of this Official Statement and is not incorporated herein.

# Where they got it wrong

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- ▣ Orange County, California
- ▣ Maricopa County, Arizona
- ▣ City of Syracuse, New York
- ▣ City of Miami, Florida
- ▣ Massachusetts Turnpike Authority
- ▣ City of San Diego, California
- ▣ State of New Jersey

# SEC Guidance

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“Lessons Learned from San Diego,” Linda Chatman Thomsen, Director, SEC Division of Enforcement (2007)

- ▣ “What should the municipal securities markets take away from these actions? I can tell you that the Enforcement Division believes there are five critical lessons that municipalities should learn from our recent actions”
  - adopt written disclosure policies and procedures
  - provide appropriate training to city officials and employees
  - focus on the big picture issues facing the city
  - disclose the bad with the good
  - hire competent professionals

# SEC Guidance

## Written Policies and Procedures

### City of San Diego Debt Policy



Department of Finance

April 2012\*

\*Annual update adopted by City Council on April 10, 2012 (Resolution R-307375)

Adopted January 12, 2009, am ended November 1, 2010, January 24, 2013

**POLICIES AND PROCEDURES FOR REVIEWING, UPDATING  
AND MAINTAINING THE STATE APPENDIX  
ISSUED BY THE STATE TREASURER  
DATED: JANUARY 12, 2009  
AMENDED: NOVEMBER 1, 2010  
AMENDED: JANUARY 24, 2013**

#### 1.0 INTRODUCTION

When the State of New Jersey issues general obligation bonds, notes or other obligations or an independent authority issues bonds, notes or other obligations (collectively, the "Obligations") which are paid by a contract or a lease whose payment is subject to annual appropriation by the New Jersey State Legislature (the "State Legislature"), a preliminary offering statement and a final offering statement are prepared. Each of these offering statements contains "Appendix I – Financial and Other Information Relating to the State of New Jersey" (the "State Appendix"). The State Appendix provides disclosure to buyers of the Obligations on financial and other information relating to the State.

In connection with each final offering statement, the State Treasurer provides a certification stating that the information contained in the State Appendix, as of the date of such offering statement, does not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements contained in the State Appendix, in light of the circumstances under which they were made, not misleading. The State Treasurer also includes in such certification a statement that there has been no material adverse change in the financial condition and affairs of the State from the date of the final offering statement to the date of issuance of the Obligations which was not disclosed in or contemplated by the final offering statement.

The State Treasurer has engaged disclosure counsel ("Disclosure Counsel") to advise the State Treasurer with respect to disclosure obligations and requirements under the federal securities laws. Disclosure Counsel provides an opinion to the State Treasurer in connection with the use of the State Appendix in each issuance of Obligations.

In order for the State Treasurer to ensure compliance with the State's disclosure obligations under federal securities laws and to provide such certification for future Obligations, the State Treasurer hereby adopts these policies and procedures for reviewing, updating and maintaining the State Appendix (collectively, the "Disclosure Policy"). The Office of Public Finance is hereby designated to implement the Disclosure Policy, except as specifically set forth herein. The State Treasurer may, from time to time, as may be necessary, review the Disclosure Policy and provide updates. By adopting this Disclosure Policy and by requiring staff to adhere to this Disclosure Policy, the State Treasurer hereby formalizes the appropriate due diligence procedures and documents to ensure compliance with the State's disclosure obligations under federal

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## Training for Participants in Disclosure Process

- ▣ New Jersey
- ▣ Orange County

# SEC Guidance

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## Disclose all material facts

- ▣ Focus on the big picture
- ▣ Disclose the good with the bad

# SEC Guidance

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Hire competent professionals



# Underwriter Responsibilities

- Rule 15c2-12
  - underwriters must receive, review, and distribute official statements of issuers of primary municipal securities offerings
  - prohibits underwriters from purchasing/selling municipal securities w/o reasonably determining that obligated persons have contractually agreed to provide continuing disclosure
- MSRB Rule G-17 - anti-fraud; “fair dealing”
- MSRB Rule G-19 - “suitability”
- MSRB Rule G-30 - “fair and reasonable pricing”
- MSRB Rule G-37 – pay-to-play

# Bond Counsel

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## ▣ Supplemental Opinion

- The statements contained in the Official Statement on the cover page and under the captions "INTRODUCTION," "THE BONDS (other than information relating to DTC and its book-entry only system, as to which no opinion need be expressed)," "SECURITY FOR THE BONDS," "TAX MATTERS," and in Appendices X and Y thereto, insofar as such statements expressly summarize certain provisions of the Bonds, the Indenture and our final approving opinion relating to the Bonds, are accurate in all material respects.

# Disclosure/Underwriter's Counsel

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- ▣ Bond Purchase Agreement
- ▣ 10b-5 “negative assurance” letter
- ▣ ...During the course of our work on this matter, no facts have come to our attention that have caused us to believe that the Official Statement ..... as of the date of the Official Statement or the [closing date] contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

# What happens if you get it wrong?

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**2010**

- ▣ SEC Enforcement Division: Municipal Securities and Public Pensions Unit
- ▣ Dodd-Frank
  - Section 21B, Civil Remedies in Administrative Proceedings

# Risk of personal liability

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## Examples

- ▣ Orange County
  - Treasurer: SEC cease and desist order; 6 years in jail, \$100K fine
  - Asst Treasurer: SEC cease and desist order; 3 years in jail; \$10K fine

# Risk of Personal Liability

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## Examples

- ▣ San Diego
  - SEC filed charges on Apr. 7, 2008 vs. City staff
  
  - Four City staff members agreed to pay civil fines
    - \$25,000: City Manager, City Auditor, Deputy City Manager/Finance
    - \$5,000: City Treasurer

# Recommended Disclosure Policies

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## Recommendations

- ▣ Establish internal controls & systems that:
  - Identify “disclosure documents”
  - Identify who is responsible
  - Establish checks & balances
  - Define drafting process
  - Require brainstorming sessions to discuss “big picture”

# Recommended Disclosure Policies

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## Recommendations (cont' d)

- Give legislative body time to review POS
  - Transmit POS to legislative body with cover letter
  - Hire competent auditors & other professionals
  - Disclose bad news
  - Provide training
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- ▣ Disclose financial disclosure timely
  - ▣ Follow the policies once adopted!



# You've been warned

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## **SEC charges New Jersey with violating securities law, *Washington Post* (8-19-10)**

- The case is part of an escalating campaign by the agency to deter financial misconduct by state and local governments as they are under intense fiscal pressure.
- A specialized SEC enforcement unit has been investigating a range of potential wrongdoing, including whether municipalities are making misleading disclosures when raising money in the bond markets and whether pension fund officials are making investments based on bribes or political favors.
- "We have a concern that there could be other states and municipalities or local governments out there that are not adequately disclosing the extent of their pension fund liabilities," Elaine C. Greenberg, chief of the municipal securities and public pensions unit, said in an interview. "By bringing this case, we hope that other states and municipalities will take notice of this enforcement action."

# Questions

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